

REMARKS

This application is amended in a manner to place it in condition for allowance at the time of the next Official Action.

Claims 1-7 are amended. Claims 9-21 are new. Support for the amended and new claims may be found generally throughout the specification, particularly at page 1, line 5 to page 2, line 26, page 7, lines 24-30, page 17, lines 19-24 and page 19, line 18 to page 20, line 23. Claim 8 is canceled. Claims 1-7 and 9-21 remain pending in the application.

The Official Action objected to claims 4-7 under 37 CFR 1.75(c) as being improper multiple dependent claims. Specifically, claim 4 was objected because it did not refer back to a claim in an alternative form. Claim 4 is amended, and depends from claim 1 only. Claims 5-7 depend from claim 4. Accordingly, applicants believe the claims are in proper dependent claim form, and respectfully request withdrawal of the objection.

The Official Action stated that the Chakrabartty (1995) article submitted with the Information Disclosure Statement filed October 3, 2005 was not considered because the Patent Office did not receive a copy of the entire article. Courtesy copies of the entire article and the PTO-1449 Form are included in the Appendix of this amendment for the Examiner's convenience. Accordingly, applicants respectfully request consideration of the Chakrabartty et al. (1995) article.

Claim 8 was rejected under 35 U.S.C. 101 for lacking patentable utility because the claim did not recite any active steps. Claim 8 is cancelled. New claims 15-21 are directed to similar subject matter, and recite active steps.

Claim 8 was rejected under 35 U.S.C. 112, first paragraph, for not complying with the written description requirement. Claim 8 is canceled. Claims 15-21 are directed to similar subject matter, and are believed to comply with the written description requirement.

Claims 1-3 were rejected under 35 U.S.C. 112, first paragraph for not complying with the enablement requirement, specifically the recited oligopeptides that will form spiral structures. Applicants respectfully disagree.

As disclosed on page 19, lines 22-27, and recited in the present claims, the oligopeptides are obtained by organic or enzymatic synthesis, have the particularity of being hetero and/or homopolymers of amino acids, selected for their property to form structures of the spiral types.

The Official Action points to several articles that suggest that spiral structures are unpredictable. The Official Action concludes that this is evidence that the present specification fails to meet the enablement requirement for spiral oligopeptides. However, contrary to the assertion made in the Official Action, one of ordinary skill in the art would have known how to select particular amino acids having the property of

forming spiral structures in order to form the recited oligopeptides.

As evidenced by the publication cited by the Examiner in the anticipation rejection (i.e. OGATA), one of ordinary skill in the art would have known that particular amino acids have the property of forming spiral structures (see column 5, line 54 to column 6, line 17). Thus, the present specification describes the oligopeptides having amino acids selected for their property to form structures of the spiral types in a manner that meets the enablement requirement.

Moreover, the Examiner is respectfully reminded that it is a well founded principle that any assertion by the Patent Office that the enabling disclosure is not commensurate in scope with the protection sought must be supported by evidence or reasoning substantiating the doubt so expressed. Rather, it appears that OGATA suggests that the present specification describes the oligopeptides having amino acids selected for their property to form structures of the spiral types in a manner that meets the enablement requirement.

As a matter of law, the expressed teaching of the patent specification cannot be controverted by mere speculation and unsupported assertions on the part of the Patent Office. As stated by the Court of Customs and Patent Appeals in the case of *In re Dinh-Nguyen and Stanhagen*, 181 USPQ 46 (CCPA 1974) :

Any assertion by the Patent Office that the enabling disclosure is not commensurate in scope with the protection

sought must be supported by evidence or reasoning substantiating the doubt so expressed. 181 USPQ at 47.

Such a standard must be applied with great care when the Examiner's conjecture is contrary to the teachings of the specification.

Therefore, in view of the above, applicants respectfully request that the enablement rejection be withdrawn.

Claims 1-3 and 8 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants respectfully disagree.

Claim 1 was rejected for being unclear because of the "and/or" recitation. Claim 1 no longer recites "and/or", and is now believed to be definite.

Claim 2 was rejected for reciting "can be identical". Claims 2 and 3 now recite "are identical or non-identical".

Claims 2 and 3 were rejected from reciting "R=H", without identifying "R". The claims are amended to recite R₁ and R₂.

In view of the above, claims 1-3 are believed to be definite, and applicants respectfully request the rejection be withdrawn.

Claims 1-3 and 8 were rejected under 35 U.S.C. 102(b) as being anticipated by OGATA U.S. 5,283,283 (OGATA). Applicants respectfully disagree.

The claims of the present invention are directed to elicitors of the natural defenses of plants against plant

pathogens and the method of treating plants with the elicitors. The elicitors comprise oligopeptides and a wetting agent or penetrating agent used in agriculture that is capable of carrying the oligopeptides to the plant cells.

OGATA discloses a rubber cement comprising 0.1-30% at least one polyamino acids and 70-99.9% at least one rubbery elastomer, where the polyamino acids are utilized to enhance the stiffness of the rubber cement composition. OGATA fails to disclose the rubber composition is an elicitor of the natural defenses of plants as recited in independent claims 1, 14, and 15, or suggest treating a plant with the elicitor as recited in independent claim 15. OGATA also fails to disclose that the rubber cement comprises a wetting agent or penetrating agent used in agriculture that is capable of carrying the polyamino acid to the plant cells as recited in independent claims 1 and 14.

As OGATA does not disclose the features of the independent claims 1, 14 and 15 with sufficient specificity for the finding of anticipation, OGATA does not anticipate these claims. Accordingly, OGATA does anticipate the dependent claims 2-7, 9-13 and 16-21.

Neither does OGATA render obvious the claims. One of ordinary skill in the art would not look to a rubber cement composition to prepare an elicitor composition suitable for treating plants and triggering the natural defenses of plants against plant pathogens.

Therefore, applicants respectfully request that the rejection be withdrawn.

In view of the above, applicants believe that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following items:

- Form PTO-1449
- Chakrabartty A., et al. (1995): "Stability of Alpha-Helices", Advances in Protein Chemistry, Academic Press, New York, Vol. 46, pp. 141-176.